

**IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CIVIL DEPARTMENT**

**DAVID REINSCHMIEDT, Personally And
On Behalf Of All Persons Similarly Situated,**

Plaintiff,

vs.

Case No. 99 C 2312

CITY OF WICHITA, KANSAS,

Defendant.

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION

TO: ALL CLASS MEMBERS IN THE ABOVE-CAPTIONED LITIGATION.

The purpose of this notice is to advise you of proposed settlement of this class action with the City of Wichita (the "City"), and of a settlement hearing to approve the settlement to be held on June 28, 2002.

You are being informed of these matters so that you may make appropriate decisions regarding the settlement.

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED BY LEGAL PROCEEDINGS IN THIS LITIGATION.

I. SETTLEMENT OF HEARING

1. Pursuant to an Order of the District Court of Sedgwick County, Kansas (the "Court") dated May 8, 2002, a hearing will be held before the Honorable Paul W. Clark at the Sedgwick County Courthouse, 525 N. Main St., Wichita, Kansas, at 9:00 a.m. on June 28, 2002, to determine: whether the proposed settlement with the City as set forth in the Settlement Agreement dated May 8, 2002 should be approved as fair, reasonable, and adequate; the amount of the cash distribution to be made to the named class representative, if any; the amount of attorneys' fees and litigation costs and expenses that should be awarded to plaintiffs' counsel; and whether the class action should be dismissed with prejudice pursuant to the settlement. The hearing may be continued without further notice. It is not necessary for you to appear at the settlement hearing.

2. This notice is given pursuant to K.S.A. 60-223 of the Kansas Rules of Civil Procedure. This notice is not an expression of any opinion by this Court as to the merits of any of the claims or defenses asserted by any party in this litigation. The purpose of this notice is to inform you of the pendency of the proposed settlement with the City and of the rights you have with respect to the proposed settlement.

3. Class plaintiff's counsel recommends Court approval of the proposed settlement with the City as fair and reasonable and in the best interest of the members of the class in view of (1) the risks and costs of continuing the litigation against the City, and (2) the substantial valuable benefits which will accrue under the terms of the proposed settlement to the class.

4. Any member of the class (as defined in paragraph 8 hereof) who has not elected to be excluded from the class may appear in person or through counsel and be heard to the extent allowed by the Court in support of or in opposition to the fairness, reasonableness and adequacy of the proposed settlement; to the request for distribution to the class representative; or to the application for attorneys' fees and reimbursement of litigation costs and expenses. However, no party will be heard in opposition to the proposed settlements and no papers or briefs submitted by any such party will be accepted or considered by the Court unless on or before June 20, 2002, such person (a) files with the Clerk of the Sedgwick County District Court, Civil Department, 525 N. Main Street, Wichita, Kansas 67203, notice of his intention to appear together with a written statement setting forth the specific basis and legal citation in support of such opposition, and (b) serves copies thereof and copies of any other papers or briefs it files with the Court, in person or by mail upon each of the following attorneys:

Counsel for Plaintiff and the Class

LJ Leatherman
Gary D. White, Jr.
Palmer, Leatherman & White, L.L.P.
627 SW Topeka Blvd., Suite A
Topeka, KS 66603

Counsel for Defendant City of Wichita

Sharon L. Dickgraft
Assistant City Attorney
455 N. Main Street, 13th Floor
Wichita, KS 67202

5. Any member of the class who does not make and serve written objections in the manner provided above shall be deemed to have waived such objections and shall be forever foreclosed from making any objections (by appeal or otherwise) to the proposed settlements. Any member of the class who is satisfied with the proposed settlements with the City need not appear at the hearing. Any member of the class who has filed and served objections to the settlements may but need not appear at the hearing.

II. DESCRIPTION OF THE LITIGATION

6. Plaintiff, David Reinschmiedt, brought a claim against the City alleging that the City exercised jurisdiction, arrested and/or incarcerated persons on the "time-to-pay" docket in violation of 42 U.S.C. §1983 and the United States Constitution. Plaintiff sought compensatory damages including loss of liberty, pain and suffering, and mental anguish for persons who were arrested and/or incarcerated. The City denied these claims and asserted a counterclaim against class members to offset monies owed to the City by class members on municipal court cases if it was found liable on the class claims.

7. The City has denied and continues to deny all allegations of wrongdoing, violations of law, or breaches of duty and have asserted and continue to assert (1) the claims alleged in the petition and amendments thereto have no substance in fact or law, (2) it has meritorious defenses to such claims, and (3) it has affirmative defenses that bar such claims. The proposed settlement and this Notice are not to be construed as an admission of liability of any kind whatsoever by the City.

8. Subsequent to the filing of the original class action petition, the Court conducted hearings on August 11, 2000 and December 1, 2000, and certified a class action pursuant to the Kansas Rules of Civil Procedure and K.S.A. 60-223(b)(3) consisting of:

All persons on the "time-to-pay" docket who had been released from probation or their period of probation had expired, and who were incarcerated (taken into custody) or ordered to work in the Wichita Work Program due to a case on this docket during the time period of July 31, 1997 to March 9, 2000.

9. On or about July 12, 2001, pursuant to an order of the Sedgwick County District Court, a notice was sent to you advising you of the certification of the class action and that you would be bound by any determination in the class action unless you requested exclusion from the class by submitting an exclusionary request form to the Clerk of the Sedgwick County District Court on or before September 21, 2001.

10. You did not exclude yourself from the lawsuit. Therefore, you are automatically a member of the class and will be bound by the settlement described in this Notice if it is approved in accordance with the procedures discussed herein. **YOU MAY NOT OPT OUT OF THE CLASS AT THIS TIME.**

11. The named plaintiff and his counsel in the course of this litigation have conducted discovery and investigations into the facts of this case, have made a thorough study of the legal principles applicable to the claims in the litigation and have concluded that settlement with the City in the amounts and on the terms hereinafter set forth are fair, reasonable and adequate and are in the best interest of the class.

12. The City has agreed to enter into a settlement agreement to obtain total and final peace, satisfaction and protection from the class claims. The proposed settlement and this Notice are not to be construed as admissions of liability of any kind whatsoever by the City.

III. SUMMARY OF THE SETTLEMENT AND RELEASE

13. The City has agreed to settlement of the claims of the class, as described in paragraph 8 above, as follows:

- a. The City will forgive all fines and costs for class members in time-to-pay cases. The total value of this forgiveness is approximately \$3,500,000.00.
- b. The City will reserve \$115.00 to each class member.
- c. The City will reserve the following sums for qualifying class members:
 - i. The sum of \$150.00 for class members who spent an aggregate amount of less than 24 hours in jail. For example, if a person was arrested twice on time to pay cases and released after spending 6 hours on the first arrest and 4 hours on the second arrest, the person's aggregate time in jail is 10 hours.
 - ii. The sum of \$250.00 for class members who spent an aggregate amount of 24 to 120 hours in jail.
 - iii. The sum of \$500.00 for class members who spent an aggregate amount of more than 120 hours in jail.
 - iv. The aggregate amount of time each class member spent in jail shall be based on the information obtained during the course of this litigation from the Sedgwick County Adult Correction Facility's computerized records, and no other source.
- d. To the extent that money has been reserved to a class member under paragraph c and the class member owes the City fines and/or costs in other than time-to-pay cases, the City will offset against such reserved amount the amount of the outstanding obligation of the class member. Any balance after offset (the amount the class member is entitled to receive less the outstanding obligations) shall be reserved for the class member.
- e. The City will expunge all arrests of class members that occurred on time-to-pay cases. The value of this remedy is \$250.00 per expungement.
- f. The City will pay \$1,000,000.00 for attorney fees and class representatives fees under 42 U.S.C. 1988 within 30 days of final court approval of the settlement. The payment of \$1,000,000.00 shall be credited in favor of class members against class fund attorney fees awarded by the Court.
- g. The temporary injunction will be dissolved and the case dismissed with prejudice.

14. The funds established pursuant to the proposed settlement will be subject only to such deductions or expenditures as are expressly provided in the agreement and approved or otherwise ordered by the Court. The funds are to be distributed to class members as the Court may direct upon final judicial approval (including any appeals or petitions for certiorari) of the proposed settlements, or at the conclusion of this litigation, or are to be returned to the City in the event that the proposed settlement fails to obtain final judicial approval or are not fully consummated and effected for any reason whatsoever. Notice is expressly given that, subject to approval of the Court, the funds may be disbursed in part to defray the cost of the litigation, including such reasonable attorneys' fees as may be awarded by the Court.

15. Subject to Court approval, the plaintiff and class counsel shall be reimbursed and indemnified out of the funds for all expenses and costs related to this Notice.

16. Except with respect to the expense of notice or as otherwise expressly permitted by provisions of the Settlement Agreement and by the Court, or otherwise ordered by the Court, no distribution of the funds is to be made until there has been final judicial approval of the proposed settlement pursuant to K.S.A. 60-223(e) of the Kansas Rules of Civil

Procedure, a final judgment has been entered dismissing the claims of the named plaintiff and all class members against the City and an Order of the Court allowing such distribution has been entered.

17. UPON THE ENTRY OF FINAL JUDICIAL APPROVAL OF THE PROPOSED SETTLEMENTS, EACH MEMBER OF THE CLASS SHALL BE DEEMED TO HAVE CONSTRUCTIVELY RELEASED ALL CLAIMS AGAINST THE CITY AS IF IT HAD INDIVIDUALLY EXECUTED A RELEASE AND COVENANT NOT TO SUE.

18. The summary herein of certain provisions of the settlement agreement and of the proposed settlement embodied therein, is not intended, and should not be construed, as a complete statement of the agreement or of this litigation.

IV. PROVISIONS FOR ATTORNEYS' FEES AND EXPENSES

19. Counsel for class plaintiffs have applied to the Court for an award of attorneys' fees and expenses incurred in the prosecution of the litigation to be drawn from the settlement funds. Their application for such fees, costs and expenses was filed with the Clerk of the District Court on May 8, 2002 and is available for inspection at the office of the Clerk. The Court will hear and consider the reasonableness of such fees and expenses during the hearing on June 28, 2002.

20. During the hearing, class counsel will also request the Court to award the named class representative, who filed and prosecuted this litigation on behalf of the class and was required by the City to respond to defendant's discovery requests, a distribution in the amount of \$40,000.00.

V. EXAMINATION OF PAPERS

21. For a more detailed statement of the matters involved in the litigation, including the terms of the settlement agreement and the application for attorneys fees, you are referred to papers on file under the caption, *David Reinschmiedt, Personally And On Behalf Of All Persons Similarly Situated, Plaintiff v. City of Wichita, Kansas, Defendant*, Case No. 99-C-2312, which may be inspected during regular business hours at the office of the Clerk of the Sedgwick County District Court, Civil Department, 525 N. Main St., Wichita, Kansas 67203. A copy of the settlement agreement or application for attorney fees can also be obtained by contacting Counsel for the Class, LJ Leatherman, Gary D. White, Jr., Palmer Leatherman & White, LLP, 627 SW Topeka Blvd., Topeka, KS 66603, telephone number 1-800-281-1836.

VI. MAKING A CLAIM

22. Upon final approval of this settlement by the Court, the City pursuant to the Court's direction will send a notice to class members notifying them of the amount of money reserved to them, the amount of offset if any for unpaid fines and costs, and the amount of deduction, if any, for class fund attorney fees and expenses. The notice shall include a Class Claim Form and set forth the claim procedures for securing payment of any net amount payable to each class member. The City will administer the payments to class members as provided herein.

23. If the settlement is approved by the Court, the forgiveness of fines and costs on time-to-pay cases will occur automatically and you will not have to file a claim to receive this benefit. Likewise, the offset of your reserved amount against fines and costs you owe the City in other than time-to-pay cases will occur automatically and you will not have to file a claim to receive this benefit. You will only have to file a claim to receive the reserved amount that remains after offset for unpaid fines and costs and after any deduction for class fund attorney fees and expenses.

24. If the settlement is approved by the Court, you will be required to present a completed claim form and photographic identification to receive any amount that has been reserved to you under the agreement. The completed form and photographic identification must be presented to the City on or before December 15, 2002.

25. If you have any questions about this notice, please write to one of the class counsel identified in paragraph 4. PLEASE DO NOT DIRECT QUESTIONS TO THE COURT OR THE CLERK'S OFFICE.

Dated: _____

The Honorable Paul W. Clark